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| 10/578,694      | 06/01/2007  | Robert Lindsay       | 1421-171 PCT/US     | 3667             |

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| EXAMINER |
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DEMERE, CHRISTOPHER R

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3782

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06/10/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |  |  |  |
|------------------------------|--|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/578,694   | <b>Applicant(s)</b><br>LINDSAY, ROBERT |  |
|                              | <b>Examiner</b><br>CHRISTOPHER DEMEREE | <b>Art Unit</b><br>3782                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-37 and 40-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-37 and 40-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 March 2010 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the pre-cut band and the pull tab relative to the pre-cut band must be shown or the feature(s) canceled from the claim(s). Examiner notes that element 50 of the replacement drawings does not distinguish itself from element 18 (side fold line). Therefore, the claimed pre-cut band (Claims 34-37) is still not shown in the Drawings. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to because the amended Drawings filed on 3/2/2010 appear to constitute new matter. Specifically, Examiner notes that element 50 appears to be indicating previously defined element 18. Moreover, there is no support in the originally filed specification for the location of element 50. With respect to element 51, it is objected to as new matter as well because it is unclear where said element 51 would be located along fold element 18 (i.e. either end, or middle of the fold) based upon the disclosure supporting the new drawings. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

3. Claim 28 is objected to because of the following informalities: the status of Claim 28 is indicated as "(previously presented currently amended)". Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-11, 24-33 and 40-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Westerman (EP 0814025 A1) in view of Kenner et al. (US 6003759 A; hereinafter Kenner '759), and further in view of Kenner et al. (US 5911358 A; hereinafter Kenner '358).

Regarding claims 1-7, 9-11, 24, 26, 28-33, 40, 43, 44, 47, 48, 50, 51-54, 57 and 58, Westerman teaches a blank for a box with at least one curved wall comprising a plurality of foldably connected panels which form the walls of the corresponding carton, said panels comprising main panels (2, 3, 4, 5) separated by a plurality of longitudinal folds (B) and arranged to form pairs of opposing side walls in said corresponding carton, a first pair of main panels each being foldably connected at either end to a respective end panel (6, 6', 8, 9), said end panels being arranged to form opposing end walls in said corresponding carton, each end wall comprising first and second end panels, and a second pair of main panels each being foldably connected at either end to a transverse

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edge of a respective end flap (12), wherein said blank is foldable to provide said corresponding carton in which the transverse edges of the opposing side walls formed by said second pair of main panels are arranged in general correspondence with the longitudinal edges of adjacent respective end panels and the transverse edges of the respective end flaps connected thereto (see Fig. 1). Westerman lacks an end tab connected to the end panels; and the pair of second main panels each being foldably connected at either end to a curved transverse edge of a respective end flap.

Kenner '759 teaches a folding box with curved sidewalls wherein end panels (30 and 36) comprise end flaps (46 and 54). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include end flaps to Westerman's end panels in order to ensure a closure of the ends (Kenner '759; Col 2 lines 22-35).

Kenner '358 teaches a folding box wherein two main panels (12 and 14) comprise end panels at either end (30 and 40) that are connected via a curved transverse edge (34 and 44). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to further modify Westerman's blank for a box to include curved transverse edges where the end panels meet the second pair of main panels in order to create a container that arches out convexly (Kenner '358; Column 1 lines 5-14).

Regarding claims 8, 27, 41, 42, 49, 55 and 56, Westerman, as modified above, teaches a blank for a box in which the end tab is adapted for fixation by adhesion using a suitable adhesive agent (Westerman; Col 2 lines 35-37).

Regarding claim 25, Westerman, as modified above, teaches a blank for a box in which the end flaps and/or end panels are provided with one or more cutaway portions (13 and 14) that permit contact between end wall components positioned on either side thereof in the assembled carton.

Regarding claims 45 and 46, Westerman, as modified above, teaches a box blank in which at least a first main panel is provided with a side tab (Westerman; 7) foldably connected to a longitudinal edge thereof, said tab being adapted for fixation to a further main panel the longitudinal edge of which is adjacent the longitudinal edge of said first main panel in the corresponding assembled carton (Westerman; Col 2 lines 22-25).

6. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Westerman in view of Kenner '759 and Kenner '358 as applied to claim 1 above, and further in view of Perot (US 6513704 B1).

Regarding claim 12, Westerman, as modified above, discloses the claimed invention except for teaching a sheet material comprising cardboard. Perot teaches a packaging box made of cardboard (Col 1 lines 45-50). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to make Westerman's box blank out of cardboard in order to utilize the flexible characteristics of cardboard for making the curved sidewalls, as taught by Perot.

7. Claims 13-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Westerman in view of Kenner '759 and Kenner '358 as applied to claim 1 above, and further in view of Hovland (US 3094265 A).

Regarding claims 13-15 and 19-23, Westerman, as modified above, discloses the claimed invention except for teaching a sheet material comprising plastics. Hovland teaches a leakproof carton comprising a thermoplastic material extruded onto the blank (Col 2 lines 65-70). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Westerman's box blank to include a thermoplastic coating in order to make the container leakproof, as taught by Hovland.

Regarding claims 16-18, Westerman, as modified above, teaches a box blank in which at least a first main panel is provided with a side tab (Westerman; 7) foldably connected to a longitudinal edge thereof, said tab being adapted for fixation to a further main panel the longitudinal edge of which is adjacent the longitudinal edge of said first main panel in the corresponding assembled carton (Westerman; Col 2 lines 22-25).

8. Claims 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Westerman in view of Kenner '759 and Kenner '358 as applied to claim 33 above, and further in view of Auclair (US 6019276 A).

Regarding claims 34-37, Westerman, as modified above, discloses the claimed invention except for a tear strip. Auclair teaches a curved sidewall carton comprising a tear line (161c). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to further modify Westerman's box to include a tear strip in order to further enable the opening of the carton (Auclair; Col 5 lines 35-40).

### ***Response to Arguments***

9. Applicant's arguments, see Pages 19-25, filed 3/2/2010, with respect to the rejection(s) of claim(s) 1-11, 24-33 and 40-58 under USC 103(a)—Westerman in view of



Kenner '759 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of USC 103(a)—Westerman in view of Kenner '759 and further in view of Kenner '358. Examiner notes that Kenner '358 teaches connecting end panels to main panels via curved transverse folds.

### ***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER DEMEREE whose telephone number is (571)270-1982. The examiner can normally be reached on Mon-Fri, 8:00 AM-5:00PM, Alt Fri, EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher Demeree/  
Examiner, Art Unit 3782

/Nathan J. Newhouse/  
Supervisory Patent Examiner, Art Unit 3782